sent take the view that the act complained of must be one of omission or commission by the lessor. TIFFANY on LANDLORD AND TENANT, p. 1258-62. Inability to link the cause with the lessor is fatal, though the actual condition of the premises renders its inhabitance impracticable. *Lack* v. *Wyckoff*, 11 N. Y. St. Rep. 678; *Griffin* v. *Freeborn*, 181 Mo. App. 203. An early case in point arose in New York in 1887 in which it was held that a constructive eviction could not be predicated on abandonment by reason of the presence of vermin. *Pomeroy* v. *Tyler*, 9 N. Y. St. Rep. 514. England, on similar facts is in accord. *Hart* v. *Windsor*, 12 Mees. & W. 68. Involving vermin and to the same general effect are, *Vanderbilt* v. *Persse*, 3 E. D. Smith (N. Y.) 428 (bedbugs); *Jacobs* v. *Morand*, 110 N. Y. Supp. 208 (waterbugs and bedbugs); *Fisher* v. *Lighthall*, 4 *Mackey* (D. C.) 82 (ants). But where there is a duty imposed on the landlord failure to fulfill it will justify abandonment under eviction. *Bradley* v. *Goicouria*, 67 How. Pr. 76. Where the defect is in existence at the time of letting the doctrine of *caveat emptor* applies. *Roth* v. *Adams*, 185 Mass. 341. As indicated in the decisions on this subject the defendant's proper remedy is preventive. A stipulation in the lease covering the relations of the parties in event of the appearance of objectionable features is a matter but of a moment, provides adequate relief and obviates the necessity of straining established legal doctrines in the apparent interest of immediate justice.

LANDLORD AND TENANT—HOLDING OVER—TENANCY FROM YEAR TO YEAR—DATE OF COMMENCEMENT—NOTICE TO QUIT.—By an agreement plaintiff let premises to defendant from Nov. 11, 1915 to Dec. 25, 1916 at yearly rent payable in quarterly installments. The defendant held over without any further agreement so that by plaintiff's acceptance of the quarter's rent on March 25, 1917, defendant was recognized as tenant from year to year. On June 8, 1917, defendant gave notice that he would quit the premises on Dec. 25, 1917. Plaintiff contended that since the original entry was on Nov. 11, the tenancy could be terminated only on Nov. 11 of some year, and hence the notice on June 8 was ineffective because not six months prior to Nov. 11. *Held*, that this year to year tenancy was a new tenancy commencing Dec. 25, 1916 and determinable on any subsequent Christmas Day by giving six months notice. *Croft* v. *William F. Blay, Ltd.* (1919), 1 Ch. 277.

When a tenant goes into possession and pays rent on a periodic basis under a void lease, no court has ever questioned the soundness of the plaintiff's contention. It is settled law that the tenancy from year to year has inception from the date of the original entry and can be terminated only upon the same date of some succeeding year. *Cf. Coudert* v. *Cohn*, 118 N. Y. 309. And it was also considered settled law in England (until the decision in the principal case) that when the tenancy from year to year was created by a holding over by the tenant after the expiration of a valid lease the implied tenancy could be terminated only upon the date of the original entry in some succeeding year. No distinction was made between the two situations. The rule in question was thus stated in 2 SMITH'S LEADING CASES, 12th edit., 123: "Where a tenant holds over and becomes a yearly tenant, then, if the time of the

year at which the term originally commenced and the time at which it ended be not the same, the notice must *prima facie* be made to expire at the former time." Cases cited in support of this proposition are *Doe* v. *Dobell,* 1 Q. B. 806; *Berry* v. *Lindley,* 3 Man. & Gr. 498; *Kelly* v. *Patterson,* 30 L. T. Rep. 842, L. R. 9 C. P. 681. The same rule is stated in substance in WOODFALL, LANDLORD AND TENANT, 12th edit., p. 207 and in 18 HALSBURY, LAWS OF ENGLAND 448. But the principal case expressly repudiates the soundness of such a rule of law when applied to tenancies from year to year created by a holding over after the expiration of a valid lease, and points out that the said rule was expounded in cases where the dates of the original entry and the end of any current year of the implied tenancy necessarily coincided because of the fact that the original term was for exactly one year or two years, etc., and not for a year and a fraction as in the principal case. Therefore, although the statements of the courts in those cases, if taken abstractly and divorced from the peculiar facts with reference to which they were uttered, do support the plaintiff's contention in the principal case, they are no authority for such a proposition when properly considered. The decision in the principal case appears proper. Certainly the implied tenancy from year to year does not commence until the original term terminates and the tenant holds over. Hence, the first day of the holding over must, by necessity, be the first day of the new tenancy. In the principal case the original term expired and the implied tenancy from year to year had inception on Dec. 25, 1916. Therefore, consistency required the court to hold that this new tenancy could be terminated only on some subsequent Christmas Day.—*Right ex dem. Flower* v. *Darby,* 1 Term Rep. 159; *Coudert* v. *Cohn, supra.* The principal case is severely criticized in 146 Law Times 308, wherein the writer assumes that certainty is more important in law than common sense. A diligent examination of the American authorities has failed to reveal any adjudication on the point involved in the principal case. The point is referred to in 2 TIFFANY, LANDLORD AND TENANT, 1451 without a reference to an American decision.

MALICIOUS PROSECUTION—PERJURED TESTIMONY—PRIVILEGE.—In a suit for damages for malicious prosecution, where it appeared that defendant had willfully and maliciously given perjured, though relevant, testimony under oath before a grand jury relating to plaintiff, which originated an inquiry the result of which caused the investigation of the matter by said grand jury, as a result of which proceeding plaintiff was indicted for grand larceny and later acquitted, *held,* that plaintiff might recover. *Kintz* v. *Harriger* (Ohio, 1919), 124 N. E. 168.

Regarding the question whether statements made by a witness in the regular course of a judicial proceeding are privileged or not, and, if so, to what extent, the American rule is that they are privileged provided they are relevant and material to the case, (*White* v. *Carroll,* 42 N. Y. 161; *Smith* v. *Howard,* 28 Ia. 51) or, if irrelevant, have been called out by questions put by counsel to the witness. *Calkins* v. *Sumner,* 13 Wis. 193. The English rule, on the other hand. results in absolute privilege whether the remarks are rele-